Waters v. *Brown*, 10 Ky. (3 A. K. Marsh) 557; Contra, *Pritchard* v. *Hewitt*, 91 Mo. 547, 45 S. W. Rep. 437; *Bonino* v. *Caledonio*, 144 Mass. 299, 11 N.E. Rep. 98; *Robinson* v. *Rupert*, 23 Pa. St. 523; *Kiff* v. *Youmans*, 86 N. Y. 324. As to the other point made by the defendant, the earlier English and some American cases have made the broad statement that, as a general rule, courts will not set aside verdicts and grant new trials in actions for tort, on account of the smallness of the damages, at least in trespass *vi et armis*. *Mauricet* v. *Brecknock*, 2 Dougl. 509; *Queen* v. *Justices of West Riding*, 1 Q. B. 624; *Hackett* v. *Pratt*, 52 Ill. App. 346; *Colyer* v. *Huff*, 3 Bibb 34; also note to *Benton* v. *Collins*, 47 L. R. A. 39. SEDGWICK MEAS. DAMAGES, Vol. 2, p. 656, says "that in actions of tort, the general rule is that a new trial will not be granted for the smallness of damages. But it seems that if the jury so far disregard the justice of the case as to give no damages at all where some redress is clearly due, the court will interpose." The modern rule, however, seems to be that, while in actions for personal torts and actions sounding purely in damages, it being the peculiar province of the jury in such cases to estimate the injury, courts will refuse to grant new trials for inadequacy of damages, yet relief will be granted where the finding is grossly inadequate and the compensation given entirely disproportionate to the injury proved to have been sustained. *Bishop* v. *Macon*, 7 Ga. 200. 50 Am. Dec. 400; *Lefrois* v. *Monroe County*, 88 Hun 109, 34 N. Y. Supp. 612. Or according to many authorities only, when the verdict clearly makes it evident that the jury acted under some bias, prejudice or improper influence. *McDermott* v. *C. & N. W. R. R. Co.*, 85 Wis. 102, 55 N. W. Rep. 179; *Fawcett* v. *Woods*, 5 Iowa 400; *Reger* v. *Rochester Ry. Co.*, 37 N. Y. Supp. 520; *Brown* v. *Union R. R. Co.*, 51 Mo. App. 192.

DAMAGES—RECOVERY FOR MENTAL ANGUISH CAUSED BY SUFFERING OF ANOTHER.—The plaintiff brings action to recover damages for injuries received through negligence of defendant. The court allowed as one of the elements of damage, the mental anguish suffered by the mother, (the plaintiff), through fear and anxiety for her infant. The defendant excepted to this that the jury should not be allowed to consider and assess damages for the mental sufferings of the plaintiff on account of injuries suffered by another. *Held*, that damages for this mental suffering were properly allowed. *Gosa* v. *Southern Ry. Co.* (1903), — S. C. —, 45 S. E. Rep. 810.

The majority of the court seem to think that evidence of mental suffering through anxiety for another is properly admissible as a reason for increasing the exemplary damages; citing as authority the cases of *Lewis* v. *Tel. Co.*, 57 S. C. 325, 35 S. E. Rep. 556; *Marsh* v. *Tel. Co.*, 65 S. C. 430, 43 S.E. Rep. 953. Neither of these citations, however, brings up the exact point of this case. There is a strong dissenting opinion in the principal case to the effect that as this is not an action for injuries to the child, allegations as to injury and damage to the child are not admissible. The weight of authority seems to be strongly against the majority opinion. Even the Texas court, which has gone as far as any in favoring damages for mental anguish, has said in the case of the *Pullman Car Co.* v. *Trimble*, 28 S W. Rep. 96, that "the plaintiff cannot recover on account of mental anguish in contemplating the suffering of others at the same time." Here the facts were very similar to those in the principal case. To the same effect are *Black* v. *R. R. Co.*, 10 La. Ann. 33, 63 Am. Dec. 587; *Wyman* v. *Leavitt*, 71 Me. 227, 36 Am. Rep. 303; *Keyes* v. *R. R. Co.*, 36 Minn. 290, 30 N. W. 888; *Stone* v. *Evans*, 32 Minn. 243, 20 N. W. 149; *Cowden* v. *Wright*, 24 Wend. 429, 35 Am. Dec 633 and note; *Hyatt* v. *Adams*, 16 Mich. 180. SHEARMAN AND REDFIELD ON

NEGLIGENCE, 5th ed. §761, say however, that the plaintiff's anxiety about others (not his own children) who may be in danger for the same cause, is not an element of damage." The exception here, which would sustain the doctrine of the principal case, is evidently based on the decision in the case of *Vogel* v. *McAuliffe*, 18 R. I. 791, 31 Atl. 1, a case which directly supports the principal case.

DEEDS—STATUTORY WORDS—IMPLIED COVENANTS—"HIS HEIRS, EXECUTORS, AND ADMINISTRATORS."—A deed containing the operative words "grant or convey" which by statute implied a covenant against incumbrances expressly provided that the grantor bound (himself omitted) *his heirs, executors and administrators*, to warrant and defend the premises unto the grantee, his heirs and assigns against every person whomsoever lawfully claiming any part thereof by or through the grantor. At the time of the conveyance back taxes were owing upon the land. In an action against the grantor upon the implied covenant against incumbrances, *Held*, that the grantee could recover. *Rotan* v. *Hayes* (1903), — Tex. Civ. App. —, 77 So. W Rep. 654.

It is a general rule "that a special covenant controls a general covenant whether express or implied on the same subject, where the two are inconsistent." Jones, THE LAW OF REAL PROPERTY IN CONVEYANCING, sec. 840. The question then is, when are two covenants inconsistent? In the principal case the court said inasmuch as the Texas statute provided that "from the use of the words grant or convey certain covenants on the part of the grantor *for himself* and *his heirs* . . . . are implied unless restrained by *express terms* contained in such conveyance," that the special covenant did not control implied covenants against incumbrances for the reason that it did not "purport to bind the grantor *himself*, but only his heirs, executors and administrators." In *Dun* v. *Deitrich*, 3 N. Dak. 3, it was held where an implied covenant was raised by a statute identical in phraseology with the Texas statute, that the implied covenant was controlled as against the grantor, by an express covenant against incumbrances limited by its terms to *the heirs, executors and administrators* of the grantor, the court saying, that "it would be unreasonable to suppose that the part es intended to have the representatives bound by one covenant and the grantor by another." Upon the effect of a covenant where the grantor purports to bind his heirs, executors and administrators there is a contrariety of authority. Some courts, guided by the rule that it is not for the courts to make contracts for parties, hold that no one is bound until the death of the grantor. *Traynor* v. *Palmer*, 86 Ill. 477; *Brown* v. *Wolcott*, 1 N. Dak. 497. Other courts hold that the manifest intention of the parties is to bind the grantor, although the word *himself* is omitted. *Smith* v. *Lloyd*, 29 Mich. 382; *Hilmer* v. *Christian*, 29 Wis. 104; *Judd* v. *Randall*, 36 Minn. 12.

EQUITY — INJUNCTION — RESTRAINT OF TRADE — CONSIDERATION AND CLEARNESS OF CONTRACT.—Stewart and Hamilton were practicing medicine as partners in the town of Viola, Mercer County, Illinois. Dr. Stewart owned the office fixtures, horse and buggy, etc. In 1899 they determined to give up general practice and study a specialty. Stewart sold his interest to Dr. Ryan for $780, and at the same time signed an agreement never to practice medicine in or within eight miles of Viola without the consent of Dr. Ryan, unless forced to by some unforseen circumstances. Hamilton acted as agent for Stewart in making this sale and held out as an inducement that the purchaser would succeed to the business of the firm. At about the same time Hamilton signed a similar agreement. The $780 was paid to Stewart, and Hamilton